ORIGINAL

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Ronald Brasher	)	
Licensee of Private Land Mobile Stations WPLQ202, KCG967, WPLD495, WPKH771, WPKI739, WPKI733, WPKI707, WIL990, WPLQ745, WPLY658, WPKY903, WPKY901, WPLZ533, WPKI762, and WPDU262	)	EB Docket No. 00-156

To: Administrative Law Judge, Arthur I. Steinberg

MOTION TO STRIKE

1. Ronald Brasher, Patricia Brasher, and DLB Enterprises, Inc. dba Metroplex Two-Way (collectively "Defendants") hereby request that the Court strike and give no weight to the Bureau's Opposition To Request For Sanctions And Response To Request For Opportunity To Cross Examine Witness (Response).[1]

2. In another attempt to poison the well of an otherwise legitimate adversarial proceeding, the Bureau has again engaged in unsubstantiated conclusions of law and fact for which the Court has provided no leave, no authority and no basis. However, rather than await the Court's ruling, the Bureau has engaged in prosecutorial abuse again by its gratuitous offering of conclusions which are untested, untried and, frankly, a patent attempt to sway improperly the disposition of this matter without the benefit of procedure or facts.

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[1] As in all things, the Bureau has mischaracterized Defendants' earlier Opposition which requested that, in the event the Court might reopen the record to admit the questionable evidence, the Court would then reopen the record for the purpose of cross examining the witness and providing rebuttal testimony from its own expert witness and from several witnesses who have previously testified. The mere ability to cross examine this witness would not be sufficient to provide the necessary due process protections which would be required if the Bureau's extraordinary request were granted.

3. As stated within our earlier Opposition, and despite the Bureau's improper attempt to alter this matter from a hearing into a war of paper, Defendants shall not engage in the offering of evidence or argument regarding evidence, properly admitted or improperly foisted, without leave of the Court. Instead, Defendants shall adhere to the orders of the Court and withhold their arguments for the proper time, as a portion of Defendants' proposed conclusions of fact or law.

4. Defendants, instead, request that the Court take judicial notice of the fact that the cases cited by the Bureau again do not provide support for the Bureau's position. Linda Crook, 3 FCC Rcd 1867 (Rev. Bd. 1988) (Crook) involves a *pro se* litigant and a timely brought petition for reconsideration. The Bureau is not acting *pro se* and it has not brought its motion in a timely manner. Nor has the Bureau relied upon any rule in the bringing of its motion, thus, its motion must be deemed to be extraordinary for all purposes. In sum, Crook has nothing to do with this matter.

5. Crosthwait v. FCC, 584 F.2d 550 (D.C. Cir. 1978) (Crosthwait) involves a broadcast applicant that was seeking review as to whether it had the right to amend a broadcast application to bring that application in conformity with the agency's rules. What this case has to do with the matter at bar is a total mystery to Defendants. What is clear, however, is that in Crosthwait the applicant's pleadings seeking review each conformed to the agency's codified procedures. As for Wait Radio v FCC, 418 F.2d 1153 (D.C. Cir. 1969), every experienced practitioner knows that Wait is regarding the standard for the agency's consideration of a waiver request. Again, what this has to do with the case at bar is unknown. What is known, however, is that the Bureau has again wasted the Court's and Defendants' time in reviewing wholly irrelevant case law, which

case law is either cited by the Bureau in complete error or due to a reckless disregard for Bureau's counsel's duty to avoid such practices.

6. In fairness, the Bureau did offer Palmetto Communications Company, 6 FCC Rcd 2193 (Rev. Bd. 1991) which, at least, involved a motion to reopen the record. However, the motivation for the Review Board's having reopened the record is due to the two persons who each accused the other of misrepresenting the ownership composition of the applicant, which accusations did not exist at hearing. Stated another way, the relevant, salient issue of eligibility was not even explored at hearing. The accusations came after the record was closed and were fully confirmed by the opposing members of an alleged partnership. In the instant matter, all issues have been explored at hearing and the Bureau does not even suggest that its proffer of, at best, questionable evidence includes any new issue. Nor, as in Palmetto, does the Bureau seek to correct a potential licensing mistake by the Commission. Instead, the Bureau merely seeks another bite of the apple and has acted to poison the fruit by its inflammatory conclusions.

7. The Bureau's disingenuous description of its actions also support grant of this Motion To Strike. The Bureau suggests at footnote 4 of its Response that the number of documents was too great for it to have been reasonably expected to examine all relevant signatures. But both documents upon which it relies were among those exhibits offered by the Bureau and, thus, one must assume that the Bureau knew full well the content and nature of each document within the Bureau's own exhibits. Certainly, the Bureau should be held to such a standard. Additionally, it is impossible for any person familiar with this matter to conclude, as the Bureau has requested the Court conclude, that the two relevant documents were not among the most referenced

documents in this matter. That the Bureau failed to make any comparison for any reason is obvious negligence, not due diligence.[2]

8. What the Bureau's Response does not do is explain its use of irrelevant or incomplete case law in its earlier Motion. It also does not explain its similar methods in its Response. The Bureau has yet to produce even one case wherein the Court has granted an untimely brought motion to reopen the record to accept supplemental testimony from an expert witness. Indeed, the Bureau has failed to cite even a single case where the record was opened to accept additional evidence of any kind, which evidence was not of the type requested by the Presiding Judge, *i.e.* testimony from the parties which would correct earlier offered testimony. Even in Palmetto, the additional evidence was offered (and confirmed) by party witnesses.

9. The Bureau does not show that the alleged evidence is "new" within the meaning contained in Commission's precedents. It does not explain the reason why it did not first ask for leave to submit evidence without resorting to unsubstantiated conclusions of fact. In sum, the Bureau has not shown that it has taken any steps, whatsoever, to reduce the prejudicial effects of its actions. Instead, the Bureau has engaged in even greater efforts to taint the proceeding in its descriptions of the evidence and what that proffered evidence is intended to prove, if anything.

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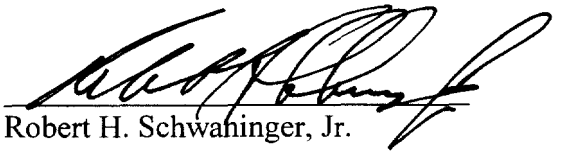
[2] Without explanation as to what "suspicious" documents made up the Bureau's initial examination, *see* Response at p. 5, the Bureau admits that the subject documents are not suspicious, as they were not deemed worthy of examination.

10. For the reasons outlined above, Defendants respectfully request that the Court strike the Bureau's Response.

Respectfully submitted,
RONALD BRASHER
PATRICIA BRASHER
DLB ENTERPRISES, INC.
DBA METROPLEX TWO-WAY



Robert H. Schwaninger, Jr.

Dated: May 3, 2001

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CERTIFICATE OF SERVICE

I, Ava Leland, hereby certify that the original and copies of the foregoing Motion To Strike within EB Docket No. 00-156 was served by hand delivery and/or facsimile upon the below listed parties on this 3rd day of May, 2001.

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